

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GAZPROM LATIN AMERICA)	CASE NO: 4:14-MC-01186
SERVICIOS, C.A.,)	
)	MISCELLANEOUS
Plaintiff,)	
)	Houston, Texas
vs.)	
)	Wednesday, August 26, 2015
LINDSAYCA, INC., ET AL.,)	
)	(9:46 a.m. to 10:24 a.m.)
Defendants.)	

MISCELLANEOUS HEARING

BEFORE THE HONORABLE FRANCES STACY,
UNITED STATES MAGISTRATE JUDGE

Appearances:	See Next Page
Court Recorder:	G. Lyons
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Defendants:

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Houston, Texas; Wednesday, August 26, 2015; 9:46 a.m.

(Call to Order)

THE COURT: Please be seated. Today is the 26th of August, 2015. I'm Frances Stacy, United States Magistrate Judge, calling Case Number 2014-1186, *Gazprom Latin American Servicios, C.A. versus Lindsayca, Inc.*

Okay. And who's present for this hearing?

MR. AURZADA: Good morning, your Honor, Keith Aurzada, Bryan Cave, on behalf of the petitioner. I have with me my partner Craig O'Dear. We filed an application for his admission pro hac vice and I ask the Court to let him argue today if that's acceptable.

THE COURT: All right.

MR. ESCOBAR: Your Honor, Manuel Escobar appearing on behalf of Jean-Marc Pivert.

THE COURT: Okay. So do you-all want to just stand up here at the bench and have our conference?

MR. ESCOBAR: Sure.

THE COURT: Did you oppose his motion to appear pro hac vice?

MR. ESCOBAR: No, ma'am. I already had told them that I did not.

THE COURT: Do you have the order for me to sign?

MR. AURZADA: I think it's been uploaded, your Honor.

I do not have a physical copy.

1 **THE COURT:** Okay. Actually the clerk of the court
2 has to approve it and then I'll be happy to sign it.

3 **MR. AURZADA:** Thank you, your Honor.

4 **THE COURT:** I'll do that later today.

5 **MR. AURZADA:** Thank you, your Honor.

6 **MR. O'DEAR:** Thank you.

7 **THE COURT:** Okay. So in the part of the case that I
8 think I have jurisdiction over has to do with the motion to
9 vacate which is Document 16. That was filed on September 2nd,
10 2014 and a response was filed September 22nd, 2014 and I
11 believe the part that I have power to do something about has to
12 do with an order that I signed on August 4th, 2014 requiring
13 that Mr. Pivert, you know, appear for his deposition and that
14 the -- he should be -- a warrant would issue for his arrest
15 because he didn't appear for his deposition. This order -- in
16 the first paragraph, it says the reason the order was issued is
17 because of my belief that, "Having considered the motion, the
18 absence of a response and Pivert's failure to appear
19 for his duly noticed deposition, which notice was
20 hand-delivered to Pivert on June 16, 2014 at his
21 residence which is located in this district."

22 I'm now of the opinion that was an incorrect fact --
23 that was not a fact, that the notice was not hand-delivered to
24 him. So I'd be happy to hear your, you know, discussions about
25 why this order should not be vacated. It's your motion.

1 **MR. ESCOBAR:** Well, it's my motion that it should be
2 vacated.

3 **THE COURT:** Correct.

4 **MR. ESCOBAR:** All right. And -- I mean, I sent -- do
5 you want me to address that, Judge?

6 **THE COURT:** Yes, please.

7 **MR. ESCOBAR:** Okay. I think it should be vacated.
8 My client did not receive notice of any of the pleadings that
9 were filed in this case. We have submitted, we believe,
10 evidence that supports that, that he did not receive any notice
11 of any of the filing of pleadings. We're not even talking
12 about actual personal service which I think the Court
13 understands that, I mean, he was not even personally served
14 with that particular order that the Court referenced and, I
15 mean, I think that's without question he was not personally
16 served.

17 And so he did not know of these. He did subsequently
18 learn of them shortly before I filed my -- filed a motion to
19 vacate and counsel insinuates a lot of things about, well, how
20 did you know, et cetera. Judge, you go to Pacer. You know, my
21 client did learn that there had been some -- something had been
22 done. He learned something about something that had been
23 filed. He contacted me. He hired me. You go to Pacer.

24 **THE COURT:** When did he hire you?

25 **MR. ESCOBAR:** He hired me, I want to say, about two

1 weeks before the motion was filed --

2 **THE COURT:** Okay.

3 **MR. ESCOBAR:** -- and so I researched it. I did a
4 little research on it. I was getting ready to file the motion.
5 So I contacted counsel and as I recall, the Rules required me
6 to confer with opposing counsel before filing motions and so I
7 called to verify that. It was at that time that I learned that
8 there was actually a deposition actually set and I think it was
9 set either the next day or the following. I don't remember
10 exactly when it was but it was within a short time and so I did
11 indicate to counsel that I'd be filing my motion and of course
12 there was no agreement on that. And so I did file the motion.
13 I had prepared it. I will tell the Court that I had prepared
14 it. I had been in some communication with my client and so we
15 proceeded to file the motion.

16 I don't know what else -- I mean, he did exercise, I
17 believe, due diligence at that point. That's how, you know,
18 basically, you know, we found out about the Court's -- or these
19 motions and the Court's orders. And so I don't think that
20 there was any notice to him and so certainly with regard to
21 that issue, I think that it would be in the interest of justice
22 certainly for the Court to set aside its orders.

23 **THE COURT:** Your client is a citizen of France?

24 **MR. ESCOBAR:** He's a citizen of France, lives in
25 Venezuela. He does not have an American passport. He's not a

1 resident alien in the United States. He doesn't have a green
2 card.

3 **THE COURT:** Has he ever been to the United States?

4 **MR. ESCOBAR:** He has been to the United States. My
5 understanding is that he had been in the United States about a
6 year before this motion -- actually a little bit more than year
7 before this motion was filed and that --

8 **THE COURT:** For what reason?

9 **MR. ESCOBAR:** I believe at that point, Judge, he was
10 here as a tourist and he did come here and, you know, we have
11 filed an affidavit to that effect that --

12 **THE COURT:** He has a house in Houston?

13 **MR. ESCOBAR:** He owns a house in Spring but, yes, in
14 the --

15 **THE COURT:** In the jurisdiction?

16 **MR. ESCOBAR:** -- Houston area -- in the Houston area.
17 He does own a house here. He does not live in the house. The
18 last time he was in the house was that time that I was
19 indicating. He --

20 **THE COURT:** A year before what? When was it?

21 **MR. ESCOBAR:** The year before the movant in this case
22 seeking his deposition filed its motion. He was here for about
23 a three-month period of time. He went back to Venezuela and
24 has been in Venezuela ever since.

25 **THE COURT:** Who lives in the house that he owns?

1 **MR. ESCOBAR:** Who lives in it? It's a young man,
2 your Honor, who is actually the son of a friend of his --

3 **THE COURT:** Okay.

4 **MR. ESCOBAR:** -- who actually lives in the house.

5 **THE COURT:** Is that the person that the notice was
6 hand-delivered to for his deposition?

7 **MR. ESCOBAR:** That's what we understand. The young
8 man -- his deposition was taken in this case and it's been
9 filed in the records of this court. And he never opened the
10 envelopes. I mean, he did indicate that he had -- that a
11 gentleman came to the door, said he wanted to drop something
12 off. He dropped something off. He didn't open it but his
13 testimony, he said he put a -- he had a stack there of mail,
14 correspondence, whatever. He put this -- whatever it was in
15 the stack. We presume that's where the notice was. He never
16 opened it. So we don't know for a fact but --

17 **THE COURT:** Okay.

18 **MR. ESCOBAR:** -- but that seems to be the case, your
19 Honor, although I don't think anybody can swear to it at this
20 point.

21 **THE COURT:** And Mr. Pivert's role in the case in
22 Venezuela that was settled, can you explain that, please?

23 **MR. ESCOBAR:** Judge, I don't frankly know what his
24 exact role was in this case. I was speaking to counsel very
25 briefly before the Court called the case. They want to do some

1 investigation about what his role may have been. I think that
2 would be accurate to say but other than that, I'm not certain.
3 I can tell the Court -- and we have filed pleadings with the
4 court where the underlying litigation -- I mean, all of it was
5 settled, I mean, period, that initially started this. And I
6 believe the last time we were here, counsel indicated to the
7 Court that what they were doing is that they were taking kind
8 of like a deposition -- intended to take a deposition kind of
9 in anticipation of possible litigation of my client. And so
10 there's some insinuation that he was working for both entities
11 at the time.

12 **THE COURT:** What entities?

13 **MR. ESCOBAR:** Gazprom, your Honor, and this Lindsayca
14 organization. There's two organizations. One is Lindsayca in
15 the United States. One is Lindsayca in Venezuela. He works
16 for the Venezuela branch in Venezuela. And so the information
17 that I've had is that he maybe had, like, a conflict or
18 something like that when he worked for both entities and that
19 -- I'm not entirely sure of that but that's my understanding
20 from what counsel has indicated to me.

21 **THE COURT:** Well, I'd like to know. I -- it's my
22 understanding your client is not willing to come to the United
23 States and give his deposition, correct?

24 **MR. ESCOBAR:** That's correct, your Honor.

25 **THE COURT:** Is he willing to give his deposition in

1 Venezuela?

2 **MR. ESCOBAR:** I have asked him. Judge, it's a little
3 difficult and I told counsel this earlier. When counsel is
4 saying here, we're going to sue you. That's why I want to take
5 your deposition -- it's kind of difficult for him to say, okay,
6 come and take my deposition, you know, because I know I'm going
7 to get sued. So go ahead and take it. Frankly, Judge, I think
8 it's a little difficult to want to have you deposition taken
9 under those circumstances. So he has indicated to me that he,
10 you know, does not want to have his deposition taken.

11 I will tell the Court -- and it's in the -- in
12 Gazprom's pleadings -- Gazprom has told the Court that his
13 deposition can be taken in Venezuela under Venezuela rules. I
14 mean, they can take the deposition down there under the
15 Venezuela rules of court. And so why do they need this Court's
16 intervention to take his deposition? Frankly, I'm not exactly
17 sure of that but anyway, that's what they put in their own
18 pleadings. They have said that the deposition can be taken
19 there and they -- and we're not talking under the United States
20 rules. We're talking about the Venezuela rules. It's
21 certainly possible.

22 So if they feel it's so important to take his
23 deposition, I don't understand why they just don't go do it
24 down there. Certainly this Court's intervention is not
25 necessary. Judge, he's -- under any tortured reading of the

1 facts, he's not a resident of the Southern District of Texas.
2 He certainly was not found here at any time that's relevant to
3 this litigation at this point and, Judge, I mean, I frankly
4 think that the -- then again, the whole issue of having not
5 been provided notice of the various pleadings that were filed
6 in the case. I think that the motion should be granted, Judge,
7 and that is the motion to vacate the Court's orders and I would
8 so request.

9 **THE COURT:** Was the notice hand-delivered to Pivert
10 on June 16th, 2014 at his residence?

11 **MR. O'DEAR:** To my knowledge, he was -- it was hand-
12 delivered to the house-sitter --

13 **THE COURT:** To the house-sitter?

14 **MR. O'DEAR:** -- who we deposed.

15 **THE COURT:** That's not adequate service, is it --

16 **MR. O'DEAR:** Actually --

17 **THE COURT:** -- to depose Mr. Pivert?

18 **MR. O'DEAR:** -- actually under 1782, I think that is
19 adequate service. He had notice. And this is my -- we didn't
20 file a lawsuit against him. This is one of the big differences
21 in the 1782 procedure and a more common judicial proceeding.
22 The standards are different. We're not -- this isn't a
23 lawsuit. We're here to take discovery and that's it. And the
24 1782 has been set up with very liberal standards to facilitate
25 that and -- but there was a specific modification to modify the

1 residency requirement.

2 And, you know, the standards on this, as we've laid
3 out in our briefing, are totally different and far more relaxed
4 than if we were suing this man, you know, trying to file a
5 lawsuit and get personal jurisdiction on him in court.

6 Judge Harmon granted our 1782 application and the
7 objective on this discovery -- this gentleman, we believe, was
8 working for us supervising a construction --

9 **THE COURT:** "Us" is who?

10 **MR. O'DEAR:** Gazprom, our client -- supervising
11 construction of a project. And that was the subject of the
12 litigation in Venezuela. That litigation has been -- it was a
13 multimillion-dollar claim against Gazprom. It was settled
14 with, as I understand it, a small amount of money going the
15 other direction. And it was during that -- the course of that
16 litigation that we became aware or concerned about the
17 possibility that Mr. Pivert was actually receiving money
18 benefits or maybe even actually employed by the entity that was
19 building this project that he was supposed to be supervising
20 for us which creates a whole number of concerns obviously for
21 us.

22 So 1782 exists for exactly this type of issue. It's
23 very analogous to the Texas Rule 202, I think it is, you know,
24 where you get to take a deposition in advance of filing a
25 lawsuit because, you know, you want an opportunity to

1 investigate to make sure and verify your basis for a lawsuit.

2 **THE COURT:** Well, tell me the facts you're relying on
3 to justify serving the house-sitter as adequate service on
4 Mr. Pivert to appear at a deposition.

5 **MR. O'DEAR:** Well, we understood that to be his
6 residence. So we delivered the documents to that residence.

7 **THE COURT:** Okay. I'm asking for facts that justify
8 your understanding that was his residence.

9 **MR. O'DEAR:** I'm not sure how we knew it was his
10 residence. Do you -- do you know that?

11 **MR. AURZADA:** No, your Honor.

12 **THE COURT:** No, you have to persuade me.

13 **MR. AURZADA:** I think the point from my perspective
14 is that now that he has counsel, he clearly can be served with
15 notice of deposition through the counsel. You know, as I said
16 in the first hearing, our goal is not to enforce the arrest
17 warrant. Our goal is to get the deposition. Now, to your
18 direct point, how did we know that? That was a fact we --

19 **THE COURT:** I'm not really worried about how you
20 knew. I want to know how you qualify for the standards to be
21 applied, the facts that qualify you to apply this scenario, you
22 know, to be able to take his deposition just because he owns a
23 house in Spring.

24 **MR. O'DEAR:** Well, okay. That gets into this whole
25 issue of whether or not the requirements for being found in the

1 jurisdiction are met. The -- and this is what I think is very
2 -- hugely significant. Okay.

3 So we did give him notice. It's clear that he got
4 notice. Now, we gave it through obviously a friend of his who
5 he was asking to sit in his house. But he got notice and he
6 disregarded the notices and the orders until the one that you
7 signed threatening arrest and that's when he showed up.

8 **THE COURT:** Okay. So go back -- go back --

9 **MR. O'DEAR:** Okay.

10 **THE COURT:** -- go back to square one.

11 **MR. O'DEAR:** Yeah.

12 **THE COURT:** How is that adequate notice?

13 **MR. O'DEAR:** Well, it's adequate notice because we
14 now know that he is aware of this proceeding, okay, and that he
15 has received --

16 **THE COURT:** Circular logic. I want to know how you
17 justify serving his house-sitter in the first place.

18 **MR. O'DEAR:** Well, because it's -- it is his
19 residence and here's what --

20 **THE COURT:** Okay.

21 **MR. O'DEAR:** -- let's go -- let --

22 **THE COURT:** What are the facts that show it's his
23 residence?

24 **MR. O'DEAR:** Okay, let's go back, okay. He then
25 appears through Mr. Escobar and he files a sworn statement with

1 this court. Mr. Pivert does.

2 **THE COURT:** Uh-huh.

3 **MR. O'DEAR:** It's a sworn statement. Now, what we
4 know today is a lot of those statements were false -- just
5 false. And we have a limited ability to investigate that but
6 we did what we could do which we deposed the house-sitter. And
7 this is one of the critical things that I'm trying -- I wanted
8 to clear up. We filed a proposed -- or actually leave to file
9 a supplemental reply and I don't see and my partner doesn't see
10 that the actual supplemental reply was accepted for filing but
11 if it hasn't been, we would ask that your Honor accept that --

12 **THE COURT:** I'll accept it.

13 **MR. O'DEAR:** -- and consider it because what we did
14 is we deposed the house-sitter and what we learned was many of
15 the things -- you know, Mr. Pivert says, well, you know, I own
16 this house for investment purposes. Well, the house-sitter
17 testified that Mr. Pivert moved to Houston in that house with
18 his wife and children in, he believes, 2011, maybe 2012. So in
19 2012, the house-sitter says Pivert was living there with his
20 family. I attended a party. His wife and children were there.
21 Okay.

22 Mr. Pivert says, well, I just own this house for
23 investment purposes. Well, this investment -- he's letting a
24 family friend live there at no rent. He's paying all the
25 expenses, paying all the utilities. This gentleman who's

1 taking care of the house for him -- there's a car that
2 Mr. Pivert keeps at the house. He's asking to maintain the
3 car, turn it on every now and then. He gets mail on a weekly
4 basis at the residence and the house-sitter gives it to the
5 president of the -- or the CEO of the company that Mr. Pivert
6 works for in Houston. He's got an ongoing relationship with
7 two companies he works for and the other one, I believe he set
8 it up.

9 And, you know, the chain of events about how this
10 notice got to him is -- was established. The house-sitter gave
11 it to the CEO and the CEO sends the mail to Mr. Pivert in
12 Venezuela is he's not there. Okay. And then he -- this -- we
13 go back to the supplemental filing. There was a new filing
14 after we took this deposition of the house-sitter and, you
15 know, what we did in our supplemental memorandum is walk the
16 Court through the things that were said and not said in that
17 filing.

18 You know, the question is, well, originally he was
19 present at the home for three months in 2013 as a tourist.
20 Well, the house-sitter's testimony shows that's not true and in
21 the supplemental filing, there's no additional sworn statements
22 from Mr. Pivert. It's just statements of counsel and it
23 doesn't deny that -- what the house-sitter says. He doesn't
24 deny it. He just says things like, well, they don't have
25 school records showing the kids went to school. They don't

1 have statements from neighbors showing how long we lived there.
2 They don't deny that the man lived there with his family. And,
3 you know, these relationships he has with these two companies,
4 he doesn't deny them.

5 So, I mean, in all due respect to counsel, I don't
6 think Mr. Escobar knows when this man is in Houston and when he
7 isn't. What we know is he maintains a house here. He has
8 someone taking care of it for him. He maintains a car here.
9 That all suggests strongly that this is a -- and he's got a
10 relationship -- an employment relationship with a company with
11 a headquarter here. He started another business here. That
12 all suggests that this is an individual who still sojourns in
13 and out of Houston which is the new standard. It's not
14 residency. It's whether this person is traveling in and out of
15 the jurisdiction.

16 And so we believe when you look at all of --
17 everything particularly that we lay out in this supplemental
18 reply that response to the sworn statements of Mr. Pivert who
19 -- that are just not true. I mean, he -- his -- that statement
20 misleads the Court as to what his true relationship with this
21 forum is.

22 Now, with the testimony of the house-sitter, could we
23 -- were we able to establish that he's still, you know, taking
24 flights in and out of here every month? No, the house-sitter
25 doesn't have that knowledge but I would suggest to you if you

1 read all the testimony and you put it all together, it
2 certainly suggests that this individual has a continuing
3 employment relationship in Houston and continues to own
4 personal property here, a residence that he is having
5 maintained in a manner that you would maintain it if you intend
6 for it to continue to be your residence.

7 And so what we suggest is that under the applicable
8 standards of 1782 for taking discovery to just investigate what
9 the facts are that that absolutely justifies Judge Harmon's
10 original grant of 1782 and it justifies -- and as Mr. Aurzada
11 said, we're not trying to enforce an arrest warrant but it
12 justifies an order from this Court -- maybe it's one that's
13 modified -- but that affirms that this gentleman should respond
14 to this discovery.

15 And we are flexible on location. I talked with
16 Mr. Escobar this morning about whether, you know, he would work
17 something out. He said, I'm willing to talk to my client. But
18 we both, you know, agree we've got to get through this and see
19 where the Court is.

20 **THE COURT:** Why do you say that now that he has an
21 attorney, you can depose him? How does that work out?

22 **MR. O'DEAR:** Well --

23 **THE COURT:** You said, now that he's hired a lawyer,
24 you can serve him --

25 **MR. O'DEAR:** I'm saying --

1 **THE COURT:** -- through his lawyer or what?

2 **MR. O'DEAR:** No. I'm saying that now -- the fact --
3 when he originally says, I never got any of this. I don't even
4 know what's going on, okay, that would be a justification for
5 ignoring discovery requests and Court orders previously --

6 **THE COURT:** Uh-huh.

7 **MR. O'DEAR:** -- but clearly what happened is he did
8 get notice. What we sent him wound up in his possession. All
9 right.

10 **THE COURT:** Okay.

11 **MR. O'DEAR:** All right. And the fact that he hired
12 counsel shows that that is what happened. So, you know, what
13 I'm suggesting is the fact that he didn't -- that he missed all
14 the prior deadlines doesn't justify saying, well, then you
15 never have to respond to this valid request under 1782, that
16 it's now time. You know what the issue is. You know what the
17 proceeding is. You have this relationship -- ongoing
18 relationship with Houston. The Court has all this information
19 that shows his original story is simply not true and there's a
20 lot of evidence that first of all, shows a continuing
21 relationship and suggests circumstantially that it's even more
22 than the house-sitter knows about.

23 **THE COURT:** Okay. So what's your offer, to take a
24 deposition somewhere else?

25 **MR. O'DEAR:** What I would -- what I told Mr. Escobar

1 is that I want -- I'd like to confer with the my client as to
2 -- the issue -- the question I have about Venezuela is I
3 understand there are some travel restrictions for Americans in
4 and out of there. That's my main hesitation. So this is a
5 gentleman who obviously travels a lot. We would be willing to
6 work out an arrangement to do it somewhere other than the U.S.
7 to the extent he's not comfortable coming back here.

8 **THE COURT:** Okay. Like where?

9 **MR. O'DEAR:** Well, you know, he's a resident of
10 France -- wherever it's -- wherever, frankly, it's convenient
11 for him. Maybe somewhere in South America close that's easy to
12 get in and out of. Panama is a very easy country to be in and
13 out of. And it's possible Venezuela may work. I just want to
14 be careful because I'm -- I just got awareness in another
15 situation recently that there may be some travel restrictions
16 there. I want to make sure I fully understand that.

17 **THE COURT:** Okay.

18 **MR. ESCOBAR:** Judge, now that the Court's granted his
19 motion to file the pleading that he indicated, I would like an
20 opportunity to respond to that --

21 **THE COURT:** Sure, of course.

22 **MR. ESCOBAR:** -- but I would point out to the Court
23 just immediately that it's clear that he comes to the United
24 States -- where is it clear? I mean, there is no evidence that
25 he comes to the United States. The deposition testimony of

1 Mr. Drake -- Mr. Drake interned. He interned at this company
2 where they supposedly say that my client worked. Right. He
3 interned there in 2014. Mr. Drake never saw him there and this
4 is in the testimony -- in the deposition testimony. He says he
5 didn't have an office there. He didn't -- you know, so far as
6 he knows, he didn't receive mail there. He didn't get
7 anything.

8 This thing about Mr. Drake saying that he
9 periodically delivers mail to this person -- Mr. Drake said in
10 his deposition, I don't know when I did it but one time, I gave
11 this person my -- his mail, one time. The entire time I've
12 lived here, one time I gave this guy -- and I forget his name.
13 It's in the deposition -- I gave him the note. That was it.
14 It was not something that he did periodically, that he did
15 regularly. He never did any of that regularly. That was his
16 sworn testimony.

17 This thing about his running a corporation -- another
18 corporation, that corporation was involuntarily dissolved about
19 a year before this case even initiated. It was involuntarily
20 dissolved by the State of Texas. I'm not exactly sure why but
21 my guess is they didn't file the proper paperwork in Austin and
22 so it was just automatically dissolved involuntarily. It was
23 not an ongoing corporation.

24 My client did not work for the Lindsayca United
25 States of America which is in Houston, Texas. He worked for

1 Lindsayca, the -- a separate corporation in Venezuela. So he
2 did not work for the same entity here in the United States that
3 they're talking about.

4 As far as Mr. Pivert coming to the United States,
5 Mr. Pivert said that he came to the United States, he recalls,
6 in early 2013 -- in early 2013. He says he remembers being
7 here for about a three-week period from January to March, more
8 or less, in 2013 and that was when he came as a tourist that I
9 told the Court earlier. Mr. Drake says that he had seen
10 Mr. Pivert one time at that house. He wasn't entirely sure
11 when it was. He said it could have been 2012. You know, it
12 could have been around that time. I mean, that is not, you
13 know, so much different from early 2013. So, I mean, I don't
14 think there's any inherent inconsistency in the testimony and
15 in the affidavit.

16 He wasn't sure of a lot of things. He wasn't sure
17 whether -- counsel says, well, we know he got the stuff. We
18 know he got it. He says, I don't know if he got it. I don't
19 know if this other gentleman delivered it to him. I don't know
20 any of those things and it's in his deposition. He says that.
21 He says that to all -- a series of questions relating to that.

22 As far as coming in and out of Houston, there is
23 absolutely no evidence that he comes in and out of Houston --
24 none. All we have is conjecture. We have somebody saying he
25 does without any evidence to support it -- none whatsoever.

1 And, Judge, I mean, he is not a resident of the Southern
2 District of Texas, you know, and certainly he cannot be found
3 here. He doesn't come here on a regular basis. I think the
4 term is he doesn't come here consistently. He just doesn't.

5 **THE COURT:** Okay.

6 **MR. ESCOBAR:** And so for counsel to be making those
7 types of claims that he does is -- I mean, to me, it's
8 illogical. I mean, it's really stretching it when you look at
9 the deposition testimony. He doesn't come here --

10 **THE COURT:** Okay.

11 **MR. ESCOBAR:** -- and that's the reality of it. And
12 so --

13 **THE COURT:** What -- you know, Judge Harmon is the one
14 who decided that Mr. Pivert was a resident -- or was found in
15 this district under Section (a) of 1782.

16 **MR. ESCOBAR:** Yes, ma'am.

17 **THE COURT:** My order had to do with whether he was
18 served or not. So now I'm asking you, even if hand-delivery to
19 his -- person that was living at his house that he owned was
20 not an adequate notice, you know, does he have adequate notice
21 now that they want to take his deposition?

22 **MR. ESCOBAR:** That's kind of putting the cart before
23 the horse. Yeah, he was served with a notice he never got but
24 somebody got it later. His attorney found out about it. So
25 now he has notice. I mean, I think it's putting the cart

1 before the horse, your Honor, very candidly. My motion is not
2 just to vacate your order --

3 **THE COURT:** You think that's ineffective?

4 **MR. ESCOBAR:** I think it's ineffective, correct. My
5 motion is not just to dissolve your order but it's to dissolve
6 all the prior orders that have also been issued by the Courts.

7 **THE COURT:** Well, I'm -- I don't have jurisdiction to
8 dissolve Judge Harmon's order.

9 **MR. ESCOBAR:** I do have that motion though, Judge.

10 **THE COURT:** Yes, you do.

11 **MR. ESCOBAR:** I mean, I want the Court to be aware of
12 that. I'm not abandoning those --

13 **THE COURT:** Right, right.

14 **MR. ESCOBAR:** -- and I don't believe that this Court
15 -- well, Judge Harmon, I suppose, had the jurisdiction to issue
16 that order and so, you know, that's certainly our position. My
17 client was not a resident here. He was not found here and that
18 continues to be our position. We have not changed --

19 **THE COURT:** And he didn't get notice. That's your
20 position?

21 **MR. ESCOBAR:** He didn't receive notice either of
22 anything.

23 **THE COURT:** Okay. Somehow he found out about this
24 problem on Pacer, you say?

25 **MR. ESCOBAR:** No, I found out about it on Pacer. He

1 said he understood that there were some motions -- or he didn't
2 call them "motions." I forget exactly what he called them but
3 something that had been filed with the court -- he understood
4 some kind of orders and he asked me to look into it. I got on
5 Pacer which of course I'm familiar with. So I got on Pacer and
6 sure enough I found them. That was about a two -- maybe a
7 little less than two weeks before I filed the motion.

8 **THE COURT:** So you don't really know how he found out
9 about this case or proceedings against him?

10 **MR. ESCOBAR:** That's correct, your Honor.

11 **THE COURT:** You don't know? And he hired you a
12 couple weeks ago?

13 **MR. ESCOBAR:** No, no, no, a couple of weeks before
14 the motion was filed.

15 **THE COURT:** Okay. All right, sorry.

16 Okay, do you have any response?

17 **MR. O'DEAR:** Yeah. Judge, the -- this is -- prior to
18 that statement we just heard, it's the first time there's been
19 anything said in this case. How did this man find out that we
20 had served all these notices and orders? Okay. He's -- he
21 came forward with an affidavit originally.

22 So he has the ability and the willingness to give
23 testimony to this Court. He's demonstrated that but then when
24 we take discovery to show that that testimony that he gave was
25 not truthful, so why didn't -- why haven't -- why hasn't he

1 come forward to answer this question, well, how did you know
2 about this? Why don't we have a description? Why don't we
3 have his sworn testimony about how this came to be? Did he
4 actually -- did it actually work the way the house-sitter said?

5 Apparently it was given to the CEO of my company and
6 the CEO sent it to me. Maybe that's the truth or did he just
7 hear some rumor in a bar? I suspect he actually got these
8 documents and that's when he called Mr. Escobar but the whole
9 point is he hasn't come forward with a sworn statement as to --
10 explaining it if it was something that would, you know,
11 constitute not fair notice. He got the message somehow and now
12 what's clear is that a modified order that says, okay, look,
13 you're not being sued. We don't have the typical due process
14 and jurisdiction issues. This is simply a proceeding to take
15 discovery, to do an investigation and the movement -- or the
16 movant for that persuaded Judge Harmon that 1782 requirements
17 have been met. There have been multiple orders, multiple
18 requests for discovery. It's time to comply with those and
19 they've indicated they'll work with you on location and let's
20 move forward.

21 **THE COURT:** Okay.

22 **MR. O'DEAR:** It's discovery we're entitled to.

23 **THE COURT:** So is your client willing to give his
24 deposition somewhere?

25 **MR. ESCOBAR:** I don't know, your Honor.

1 **THE COURT:** Can you have a conversation about that?

2 **MR. ESCOBAR:** Sure.

3 **THE COURT:** And when can you file your response to
4 his additional briefing?

5 **MR. ESCOBAR:** Can I have a week, your Honor?

6 **THE COURT:** Sure. Of course every discovery dispute
7 we strongly encourage the parties to resolve by agreement and
8 if there is anywhere your client would be willing to give his
9 deposition, I'm sure that -- you know, I'm understanding that
10 Gazprom is willing to travel to Paris, for instance, to take
11 your client's deposition. Is that true?

12 **MR. O'DEAR:** Any country including potentially
13 Venezuela once -- if I can get that issue cleared but certainly
14 wherever it would be convenient for him, we would work with him
15 and arrange that.

16 **THE COURT:** I would like you to have a real specific
17 negotiation about that and if you're able to work it out, let
18 me know immediately. And a week from today, you can file your
19 response to their briefs which is --

20 **MR. ESCOBAR:** If we -- I'm sorry. I didn't mean to
21 interrupt but would it be too much to ask for a week from
22 Friday?

23 **THE COURT:** No, it won't. Well, today's the 26th.
24 Friday is the 28th and a week from that day is the 4th --
25 September 4th and that's a holiday weekend. So let's give you

1 until the 8th of September.

2 **MR. ESCOBAR:** Thank you, your Honor.

3 **THE COURT:** That is a Tuesday. Okay?

4 **MR. O'DEAR:** And, Judge, would it be advisable that
5 we go ahead and -- since our supplemental reply was attached as
6 an attachment to a motion for leave, just go ahead and file it
7 so it officially is on file?

8 **THE COURT:** Is that necessary, William? I don't
9 think it is. We have it in our --

10 **MR. O'DEAR:** Okay.

11 **THE COURT:** -- electronic records.

12 **MR. O'DEAR:** Okay.

13 **THE COURT:** We're just going to say it's filed now.

14 **MR. O'DEAR:** It's filed, all right. Thank you.

15 **THE COURT:** I'll be able to access that and then you
16 can file your -- you know, whatever reply to that -- response
17 to that but between now and then, I really would appreciate you
18 focusing on --

19 **MR. O'DEAR:** We will.

20 **THE COURT:** -- trying to come to some agreement about
21 Mr. Pivert giving his deposition somewhere, you know, by
22 agreement -- just by agreement.

23 **MR. ESCOBAR:** Question --

24 **THE COURT:** Yes.

25 **MR. ESCOBAR:** -- am I to understand by the Court's

1 comments that you're not going to issue recommendations on the
2 actual motion to vacate Judge Harmon's orders?

3 **THE COURT:** If it was referred to me, I am.

4 **MR. ESCOBAR:** I thought it was, your Honor, yes.

5 **THE COURT:** Okay.

6 **MR. ESCOBAR:** I could be wrong but I'm assuming it
7 was.

8 **THE COURT:** If it's referred to me, I will issue
9 recommendations, yes.

10 **MR. ESCOBAR:** I cannot verify it.

11 **THE COURT:** I'd rather consider it all at one time.

12 **MR. ESCOBAR:** Yes, ma'am.

13 **THE COURT:** And after your response is filed.

14 **MR. ESCOBAR:** Right.

15 **THE COURT:** Okay. And totally try to work it out and
16 if you are able to, let me know immediately, please.

17 **MR. ESCOBAR:** Yes, ma'am.

18 **MR. O'DEAR:** We will, your Honor.

19 **MR. AURZADA:** Thank you, your Honor.

20 **THE COURT:** All right, good luck with your case.

21 **MR. ESCOBAR:** Thank you, your Honor.

22 **THE COURT:** Thank you for appearing.

23 **MR. ESCOBAR:** May I be excused, your Honor?

24 **THE COURT:** Yes. Thank you for appearing.

25 Do we have your contact information, Mr. Escobar?

1 **MR. ESCOBAR:** Yes, ma'am.

2 **THE COURT:** Because you recently appeared in the
3 case?

4 **MR. ESCOBAR:** No, your Honor. I've been in the case.
5 I've been in the Southern District for like --

6 **THE COURT:** I mean, you recently appeared in this
7 case?

8 **MR. ESCOBAR:** Last year.

9 **THE COURT:** Okay.

10 **MR. ESCOBAR:** I filed a motion in September.

11 **THE COURT:** Good. All right, thank you.

12 **MR. ESCOBAR:** Thank you, your Honor.

13 **THE COURT:** I honesty can't believe it's been a year.
14 All right. Well, try to work it out soon -- resolve that very
15 soon.

16 **MR. AURZADA:** May we be excused, your Honor?

17 **THE COURT:** Yes.

18 **MR. AURZADA:** Thank you.

19 **(This proceeding adjourned at 10:24 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is positioned above a horizontal line.

September 15, 2015

TONI HUDSON, TRANSCRIBER